



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 07-15189
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Richard B. Stevens, Esquire, Department Counsel
For Applicant: Robert Krug, Esquire

October 24, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on January 30, 2007. On April 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On June 10, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on July 1, 2008. The case was assigned to me on August 1, 2008. On August 15, 2008, a Notice of Hearing was issued scheduling the hearing for September 11, 2008. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 - 3, which were admitted without objection. The Government requested that administrative notice be taken of one document with four attachments. The document was marked as

Hearing Exhibit 1 (Hearing Ex 1) without objection. Applicant testified, called three witnesses, and submitted one exhibit which was admitted as Applicant Exhibit (AE) A without objection. DOHA received the transcript of hearing on September 22, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Administrative Notice

Columbia is a constitutional, multiparty democracy with a population of approximately 44.8 million. Dual U.S. – Colombian citizens must present a Colombian passport to enter and exit Colombia.

The U.S. State Department warns U.S. citizens of the dangers of travel to Columbia because violence by narco-terrorist groups continues to affect some rural areas and cities. While security in Colombia has improved significantly in recent years, terrorists and other criminal organizations continue to kidnap and hold persons of all nationalities and occupations for use as bargaining chips. The incidences of kidnapping in Colombia have diminished significantly from its peak at the beginning of this decade.

The U.S. Secretary of State has designated three Colombian groups – the Revolutionary Armed Forces of Columbia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC) as Foreign Terrorist Organizations. These groups carried out bombings and other attacks in and around major urban areas, including against civilian targets.

The Colombian government's respect for human rights continued to improve. However, illegal armed groups and terrorist groups committed the majority of human rights violations – including political killings and kidnappings, forced disappearances, torture, and other serious human rights abuses.

The U.S. remained fully committed to supporting the Colombian government in its efforts to defeat Colombian-based Foreign Terrorist Organizations. The Colombian government continues vigorous law enforcement, intelligence, military and economic measures against the FARC, ELN, and AUC. The Colombian government has also increased its efforts with neighboring countries to thwart terrorist expansion, investigate terrorist activities inside and outside Colombia, seize assets, secure hostage release, and bring terrorists to justice. Colombia provided anti-terrorism training to nations in the region. The government continues to seek enhanced regional counterterrorism cooperation to target terrorist safe havens in vulnerable border areas.

The U.S. – Colombia extradition relationship remains the most successful such effort in the world.

Findings of Fact

In her Answer to the SOR, Applicant admits all of the SOR allegations.

Applicant is a 29-year-old engineer employed with a Department of Defense contractor. She has worked for her current employer since September 2006. The highest degree awarded to her is a Masters of Science in Electrical Engineering. She is married and has a two-year-old daughter. She and her husband also have custody of her husband's nine-year-old niece. This is her first time applying for a security clearance. (Tr at 35, 55, Gov 1.)

Applicant was born and raised in Colombia. In 1996, she met her husband in Colombia. He was born in Colombia but lives in the U.S. and is a naturalized U.S. citizen. He was home visiting his parents who live in Colombia when he met Applicant. After two years of dating, they married in August 1998. After their marriage, her husband applied for her to immigrate to the U.S. She moved to the U.S. about seven months later. (Tr at 35, 44; Gov 1; Gov 2.)

On July 4, 2005, Applicant became a U.S. citizen. She applied for a U.S. passport on July 29, 2005. Applicant possessed a Colombian passport which was issued on November 27, 1998 with an expiration date of November 27, 2008. (Gov 2.) She maintained her Colombian passport because she understood the Colombian government requires Colombian citizens to travel on their Colombian passport. Upon learning of the security concern related to possessing a foreign passport, Applicant renounced her Colombian citizenship on June 27, 2008. She turned in her Colombian passport and her Colombian identity card in conjunction with her renunciation. (Tr at 35-36; Gov 2; Gov 3; AE A.)

Applicant's father, mother, and sister, are citizens of and reside in Colombia. Her parents are retired. Prior to retiring, her mother performed administrative work for a government agency. Her father was a teller in a bank. Her sister is a registered nurse. Her sister's husband works for a government agency which deals with health care. Although not alleged in the SOR, Applicant's parents-in-law are also citizens of and reside in Colombia. They live in the same town as Applicant's parents. There have been no incidents of terrorism where Applicant's family members reside. (Tr at 39, 43, 45-46.)

Applicant is close to her parents. She contacts them about four times a week, usually via the Internet. She talks to her sister about every two weeks. Her parents do not want to move to the U.S. Applicant intends to sponsor her sister, her sister's husband and son to move to the U.S. (Tr at 41, 43, 50; Gov 2.)

Applicant and her husband traveled to Colombia to visit family members in 1999, 2000, 2001, 2002, 2003, 2004, and 2005. Her trips usually occurred during her college semester breaks. Applicant used her Colombian passport each time she traveled because she was a Colombian citizen. She had become a U.S. citizen prior to her 2005 visit, but Applicant understood that Colombia required her to travel using her Colombian

passport. The last time Applicant traveled to Colombia to visit family members was in July 2008. She and her husband did not travel in 2006 and 2007 because of her daughter's young age. (Tr at 48-49; Gov 2; Gov 3.)

In December 2005, Applicant and her husband purchased a townhome located in the town where both of their parents reside. They purchased the home as a vacation property. The loan was obtained from a U.S. company. They will stay there when they visit family members. Applicant's parents reside in the property year round. The townhome is worth \$45,000. Applicant and her husband pay \$300 a month for the mortgage. Her parents pay for the utilities and routine maintenance. (Tr at 41, 46-48; Gov 2.)

Applicant's annual income is approximately \$72,000. Her husband's annual income is approximately \$65,000. In 2004, they purchased a home in the U.S. It is worth \$150,000. Aside from the townhome in Colombia, Applicant and her husband have no other investments outside the U.S. (Tr at 42, 56-57.)

Applicant considers the U.S. her home. The U.S. is where she wants to raise her family. It is where she wants to retire. (Tr at 42.)

The Chief Technology Officer of Applicant's company testified on her behalf. He met Applicant in 2006 when she was a university student. His company recruits the best and brightest from the local university. He describes Applicant as "intense, very enthusiastic, hard working, clever and a good mom." He is not Applicant's direct supervisor. He is involved in mentoring and problem solving. He interacts weekly with most of the engineers including Applicant. (Tr at 17-24.)

A design engineer who is a co-worker of Applicant testified. He has known Applicant since they both attended undergraduate school. They worked for the same research professor. Applicant is highly motivated, smart and excited about learning. He recalls she was very excited when she became a U.S. citizen. (Tr at 24-28.)

An engineer who works at the company where Applicant previously worked has known her since 2000. They met in college. He states that Applicant is a strong-willed intelligent person. She was happy when she became a U.S. citizen. (Tr at 30-33.)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the

factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several disqualifying conditions that could raise security concerns. Foreign Preference Disqualifying Condition (FP DC)10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*); and FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant used her Colombian passport after becoming a U.S. citizen when traveling to Colombia in 2005.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) apply:

FP MC ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*) and FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) apply. Applicant was unaware that possessing a foreign passport would be an issue related to her security clearance. In June 2008, she renounced her Colombian citizenship and surrendered her Colombian passport and identification card to the Colombian consulate.

Applicant has mitigated the Foreign Preference concerns. Guideline C is found for Applicant.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant's case.

FI DC ¶ 7(c) (*contact with a family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or*

coercion) applies because Applicant's father, mother, sister and in-laws are citizens of and reside in Colombia.

FI DC ¶ 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group or country by providing that information*) applies for the same reason. Applicant's relationship with her family members in Colombia create a potential conflict of interest between her obligation to protect sensitive information or technology and her desire to help her family members residing in Colombia.

FI DC ¶ 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation*) applies with respect to the townhome that Applicant and her husband own in Colombia. It can be considered a substantial property interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) apply to Applicant's case.

FI MC ¶ 8(a) (*the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.*) applies. The Colombian government has a strong relationship with the U.S. government. The threat within Colombia are the narco-terrorist groups. The Colombian government has been proactive in preventing and defeating narco-terrorism. Applicant states that her family members do not reside in an area of the country that has a terrorist presence. Her parents are retired. Her sister is a registered nurse. Her brother-in-law is in the healthcare career field. It is unlikely that Applicant will be placed in a position of having to chose between the interests of her family members in Colombia and the interests of the U.S. based on the fact that her family members appear to be average citizens and do not have a high profile in the Colombian government. They reside in an area of the country where there is no presence of terrorist activity.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*) applies. While Applicant is close to her parents and sister, she has established a home in the U.S. with her husband. She has lived in the U.S. since 1999. She attended college at a U.S. university. Her daughter was born here. She works for a U.S. company. Aside from her family members in Colombia, her significant personal

and professional associates are located in the U.S. After she retires, she plans to live in the U.S.

FI MC ¶ 8(f) (*the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual*) applies. Although Applicant and her husband own a townhome in Colombia, the majority of their assets are located in the U.S. They have no other foreign assets. Applicant's parents reside in the townhome year round. Applicant's family stays in the townhome when they visit relatives in Colombia. Although Applicant described the townhome as a vacation property for her family, the property is also used as a place for her retired parents to live. The property interest in the townhome is not significant enough to result in a conflict for the Applicant.

After weighing all of the evidence, including the witnesses' testimony, Applicant's testimony, and observing her demeanor at hearing, I am convinced that she would resolve any conflict in favor of the U.S.

For these reasons, I conclude Applicant mitigated the concerns raised under Foreign Influence.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature, well-educated, and intelligent woman. She attended U.S. universities to obtain her undergraduate and Masters degrees. She has developed strong bonds in the U.S. While she has ties of affection to her parents, sister and in-laws, her immediate family, her husband and daughter, are citizens and reside in the U.S. The majority of their assets are located in the U.S. They intend to live and retire in the U.S. Her superiors and co-workers attest to her favorable character and work performance. After evaluating

all of the evidence in the context of the whole person, I conclude Applicant has met her burden of mitigating the concerns raised under foreign influence and foreign preference.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge